

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EUGENE SZYMANSKI,

Petitioner,

Case Number 05-10241
Honorable David M. Lawson

v.

PAUL RENICO,

Respondent,

_____ /

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY JUDGMENT

The petitioner, Eugene Szymanski, presently confined at the Carson City Correctional Facility in Carson City, Michigan, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Presently before the Court is the petitioner's motion for summary judgment.

Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Bryson v. Middlefield Volunteer Fire Dept., Inc.*, 656 F.3d 348, 351 (6th Cir. 2011) (quoting Fed. R. Civ. P. 56(a)). The summary judgment rule applies to habeas proceedings. *Harris v. Stegall*, 157 F.Supp.2d 743, 746 (E.D. Mich. 2001). However, a federal district court should not enter a summary judgment in a habeas case if the pleadings or papers present a genuine issue of material fact. *United States ex. rel. Johnson v. De Robertis*, 718 F.2d 209, 211 (7th Cir. 1983).

In this case, the petitioner has not demonstrated the absence of a genuine issue of material fact and therefore has not met the burden for summary judgment. The Court will deny the petitioner's motion without prejudice. The Court will review the issues raised by the petitioner in its consideration of the petitioner's petition for a writ of habeas corpus.

Accordingly, it is **ORDERED** that the petitioner's motion for summary judgment [dkt. #74] is **DENIED WITHOUT PREJUDICE**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: November 22, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on November 22, 2011.

s/Deborah R. Tofil
DEBORAH R. TOFIL